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REC

EDITORIAL

What happens when someone records your call without consent?

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We must have heard voice messages while on a call, like “this call is being recorded” whenever we ask for grievance redressal to service providers. Since these voice messages are made prior to the conversation, the user can choose either to leave or stay on call as it is brought to their notice. Call recordings have served as evidence to prove one’s argument/ stand and to disprove any false narrations. However, it is a violation of privacy when call recordings are made without consent. Consent is vital and any recording without consent will constitute an offence as an invasion of privacy guaranteed under Article 21 of the Indian Constitution.

It would not be out of place to mention about the mobile apps listening in on our conversations even when they are not in use. **Section 42 of the Telecommunication Act, 2023 penalises any interception of messages unlawfully with imprisonment of up to 3 years or with a fine which may extend to Rs.2 crores. All Apps get our consent to access phone records, camera, media files etc. though it comes under the guise of providing effective service or experience, it is an open secret that they use our data and beyond.** One cannot pull them up without proper evidence to show that they acted outside the scope or misused the permissions provided. So, can a call recording be admitted in court?

In the case of **R.M. Malkani vs. State of Maharashtra AIR 1973 SC 157**, the Hon’ble Supreme Court held that tape recordings were admissible as primary and direct evidence even though it violates the Indian Telegraph Act, 1885. In this case, the call recording of a doctor who was guilty of the death of a patient offering a bribe was brought before the court due to its relevance to the matter in issue. **Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 provides for the admissibility of electronic records (this was section 65-B under the Indian Evidence Act, 1872)**. In **Ziyauddin Burhanuddin Bukhari vs. Brijmohan Ramdas Mehta, AIR 1975 SC 1788,** the Apex Court held that a transcript of a tape-recorded conversation can be used to refresh the memory of a witness.

Section 63 of the BSA, 2023 mandates that to be admissible in court, the record needs to be signed by the person in charge of the computer or communication device and an expert’s certificate that states that the electronic record was produced by the device that was used to make the recording was used in the normal course of business. The certificate must also state the particulars of the device used to make the recording, such as its make, model, and serial number and must confirm that the recording was not tampered with or altered in any way. The Hon’ble Chhattisgarh High Court in the case of **Asha Lata Soni vs Durgesh Soni 2023 SCC OnLine Chh 3959** held that recording the conversation of the wife without her knowledge amounts to violation of privacy and further directed to set aside the order of the family court permitting the evidence.

The law is yet to solidify a clear path on the same and the broad principles set out by the Hon’ble Supreme Court is guiding the other courts to either accept or reject call recordings on a case-to-case basis though many courts are giving judgements per incuriam. Till the air clears it is best to speak with caution.

LEGAL CRISPS

First aid and lack of intention to kill

- Seethala B

Case: Namdeo Ramchandra Chormule v. State of Maharashtra
Citation: Criminal Appeal No. 430 of 2021

In this case, the convict who was sentenced to 10 years of rigorous imprisonment for attempted murder had his conviction altered, leading to his release after serving 5 ½ years. He was previously convicted under Section 307 of the Indian Penal Code, 1860, by the Additional Sessions Judge, Solapur. The convict had also received a two-year sentence under Section 504, both to run concurrently.

On August 2, 2015, the convict, an alcoholic, had a violent quarrel with his wife, during which he forcibly poured rat poison into her mouth. She was hospitalised for four days, and the medical evidence confirmed the presence of poison from the crime scene in her body.

The Court reviewed the evidence and found no pre-meditated intent to murder. It also mentioned that the poisoning occurred spontaneously during the quarrel. The convict's action of taking his wife to the hospital indicated a lack of intent to kill. Thus, the Court revised the conviction to **Section 308 of the IPC (attempt to commit culpable homicide)** instead of Section 307. Considering the maximum sentence for Section 308 (Section 110 of the Bharatiya Nyaya Sanhita BNS) is 7 years, and the convict had already served 5 ½ years, the Court found the time served sufficient, and the conviction under Section 504 was upheld.

Tenancy at sufferance

-Nithyaparvathy R G

Tenancy at sufferance, also known as holdover tenancy, is when a tenant with valid possession of a property (such as a lease) holds over without the owner's permission. The only distinction between a holdover tenant at sufferance and a trespasser is that the tenant obtained possession legally but eventually overstayed.

Eviction proceedings, for example, can result in a tenancy of sufferance. This may be the case if a tenant's agreement expires, but they want to stay on the property, and the landlord plans to lease the space to new tenants. The property owner can take legal action to remove the tenant from the property, but the tenant continues to stay on the property and cannot be forcibly evicted.

While the eviction procedure has begun, the tenant must follow the rental or lease terms. However, a landlord should not collect rent during this time in some places because it may be considered a lease extension. Evictions can vary significantly in duration, typically ranging from a few days to several months. The exact timeline largely depends on the jurisdiction and the case's specific circumstances. During that time, the landlord would be required to accept the tenancy at sufferance.

The property owner may offer to buy out the tenant to have them leave the property. This may be an expensive choice, but it would speed up the resolution of the matter. If such a purchase is accepted, the tenancy at sufferance will expire, and the tenant will be required to leave the premises. A property owner may also offer a new rental agreement. The signing of the new agreement by all parties terminates a tenancy at sufferance, and the terms of the revised agreement bind the tenant.

In ***Indian Oil Corporation Ltd. vs. Sudera Realty Private Limited (CIVIL APPEAL NO.6199 & 6200 OF 2022)***, the Supreme Court held that a tenant who continues to occupy a property after the lease expires is required to pay mesne profits. The court emphasized that while a tenant at sufferance cannot be forcibly removed, their possession becomes unlawful after the lease expires. The court cited Section 111(a) of the Transfer of Property Act of 1882, which stipulates that a lease is determined by the passage of time, implying that the tenant's initial authorised entry does not provide them continuous rights after the lease terminates. The court ruled that the tenant at sufferance is not a tenant by holding over, and their possession is similar to that of a trespasser, albeit with some legal recognition.

CASE CHRONICLE

Social media giants scoop out defamatory post about ice cream brand

-Sowmiya R K

The Delhi High Court has issued a significant ruling in ***Gujarat Cooperative Milk Marketing Federation Ltd. (GCMMF) v. Deepa Devi CS(OS) 499 of 2024***, directing major social media platforms to remove posts alleging contamination in Amul ice cream products. Justice Manmeet Pritam Singh Arora ordered X (formerly Twitter), Meta, and Google LLC to delete URLs containing posts and videos about a purported dead centipede in an Amul vanilla ice cream tub within 36 hours.

The court's decision follows the defendants' failure to substantiate their claims and comply with a previous order dated July 4, 2024. Due to the defendants' non-appearance and failure to justify their claims, the Court granted an absolute interim injunction against them. The ruling extends beyond the URLs listed in the original plaint, allowing GCMMF (Amul) to report additional posts for removal.

In a notable aspect of the judgment, the Court directed that if any identical posts, tweets, videos, or parts thereof are posted by other users on X Inc. or Meta's platforms, GCMMF has the liberty to communicate the URL details to the platforms, which must be removed within 36 hours. If the platforms refuse to remove the reported content, claiming it is not identical to the impugned posts, they must communicate this to GCMMF within 48 hours, allowing the company to pursue further legal remedies.

The court also bound Google LLC to take down specified URLs on YouTube containing the impugned posts and videos within 36 hours. This comprehensive order addresses not only the immediate issue but also potential future reposts of the contested content, providing a framework for swift content moderation in cases of unsubstantiated claims against brands on social media platforms.

BEYOND THE OBVIOUS

Laws governing Olympics

-Sri Sai Kamalini M S

This is the Olympic Season, and it is constantly trending on social media for both positive and negative reasons. But have you ever wondered if there are any laws or charters that help ensure the smooth functioning of this event? There are two primary laws and bylaws which govern the conduct of this event. The **Olympic Charter**, which codifies the fundamental principles of Olympicism, is an important document that contains the rules and bylaws adopted by the International Olympic Committee (IOC). **The Olympic Movement Code on the Prevention of the Manipulation of Competitions (Code)** also helps protect the sport's integrity by preventing manipulation.

The Code contains eight articles in total. The Code provides important definitions of terms such as betting, inside information, and who is considered a participant. The Code considers betting, manipulation of competition intentionally and by corrupt conduct, disclosing inside information, failure to report any such disclosure, aiding or abetting any such actions and failure to cooperate in investigations as some of the violations.

The Code provides three important rights to the accused or concerned persons that is the right to be informed about the allegations, the right to be represented, and the right to a fair and impartial trial that is also timely. The Code also mentions that the Sports organizations must respect the confidentiality of the concerned persons, and the “information should only be exchanged with entities on a need-to-know basis”. The burden of proof lies on the sports organizations to establish the occurrence of violation.

MEET THE TEAM

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